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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,312	10/21/2003	Donald E. Weder	8403.861	4554

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,312

Applicant(s)

WEDER ET AL.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/21/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1-33** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 5,937,576 in view of U.S. Patent No. 6,427,380.

Regarding instant **independent claim-10**:

The floral holding material of instant independent claim-10 being the broadest of the instant independent claims, is encompassed by the flexible vase as cited in the conflicting '576 independent claim-1.

Specifically, a sheet of flexible material having means for connecting the first end portion to the second end portion to form a shape-sustaining support member as cited in the conflicting '576 claim-1, encompasses a multi-sided shape-sustaining support member formed of a sheet of flexible material, as cited in the instant independent claim-10.

Regarding instant **independent claims 1, 18 and 25**:

The substantially rectangular shape-sustaining support members (instant independent claims 1 and 25) and the multi-sided shape-sustaining support member (instant independent claim-18), formed of a sheet of flexible material comprising a connector assembly for connecting the first end portion to the second end portion to form the shape-sustaining support member as cited, are encompassed by the flexible vase as cited in the conflicting '576 independent claim-1 wherein, a sheet of flexible material having means for connecting the first end portion to the second end portion to form a shape-sustaining support member is recited.

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The conflicting Weder '576 reference claims are silent as to a plurality of triangularly shaped tabs extending from the upper side for stabilizing a floral grouping.

The secondary Weder '380 reference (independent claims 1 and 4) recites a plurality of slots extending radially from the centrally disposed recess (in the upper side of the sheet of flexible material) so as to provide support in a manner that does not crush the stem portions.

The instant rectangular tabs as cited are considered an obvious variation of the stem support means as recited in the conflicting '380 reference, as evidenced by their functional equivalence.

Regarding instant dependent claims **2,11,20 and 26**:

The discussions above regarding instant independent claims 1, 10, 18 and 25 are relied upon.

The polymeric construction as cited in the instant claims is recited in conflicting '380 claim-2, and encompassed by the sheet of flexible material as recited in the conflicting '576 independent claims.

Regarding instant dependent claims **3,19 and 27**:

The discussion above regarding instant independent claims 1, 18 and 25 is relied upon.

The instant claims further cite a plurality of apertures in the triangular tabs adapted to receive a portion of a stem.

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The instant rectangular tabs as cited are considered an obvious variation of the stem support means as recited in the conflicting '380 reference, as evidenced by their functional equivalence.

Regarding instant dependent claims **4,12 and 28**:

The discussions above regarding instant independent claims 1, 10 and 25 are relied upon.

The conflicting Weder '576 reference claims are silent as to a plurality of score lines as cited in the instant claims.

Conflicting '576 independent claim-1 recites means for connecting the first end portion to the second end portion to form the shape-sustaining support member; which encompasses a plurality of score lines to aid in folding the sheet of flexible material into a shape-sustaining support member as cited in the instant claims.

Regarding instant dependent claims **5 and 29**:

The discussion above regarding instant independent claims 1 and 25 is relied upon.

The score lines as cited in the instant claims are encompassed by the means for connecting the first end portion to the second end portion to form the shape-sustaining support member as recited in the conflicting '576 independent claim-1.

Regarding instant dependent claims **6,13,14,21 and 30**:

The discussions above regarding instant independent claims 1, 10, 18 and 25 are relied upon.

The connector assembly comprising an extension having a bonding material disposed thereon as cited in the instant dependent claims, is encompassed by the broad recitation of a means for connecting the first end portion of the sheet of flexible material to the second end portion of the sheet of flexible material as cited in the conflicting Weder '576 independent claim-1; furthermore, bonding means are recited in the conflicting '576 dependent claim-5.

Regarding instant dependent **claim-7**:

The discussion above regarding instant independent claim-1 is relied upon.

As discussed above in the preceding rejection, the broad recitation in the conflicting '576 independent claim-1 of "a means for connecting the first end portion of the sheet of flexible material to the second end portion of the sheet of flexible material", in combination with the recitation of "bonding means disposed on at least a portion of one of the upper and lower surfaces of the sheet of flexible material" as recited in the conflicting '576 dependent claim-5, broadly encompasses the "adhesive disposed" as cited in the instant dependent claim-7.

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Regarding instant dependent **claims 15,22 and 31**:

The discussions above regarding instant independent claims 1 and 10 are relied upon.

The discussion above regarding instant claim-7 is relied upon for the "adhesive disposed" limitation as cited in the instant claim.

Regarding instant dependent claims **8,16,23 and 32**:

The discussions above regarding instant independent claims 1, 10, 18 and 25 are relied upon.

The discussions above regarding instant dependent claims 7, 15 and 22 are further relied upon for the "adhesive configuration" limitation as cited in the instant dependent claims 8,16,23 and 32.

Regarding instant dependent **claims 9 and 24**:

The discussion above regarding instant independent claims 1 and 18 is relied upon.

The discussion above regarding instant dependent claim-7 above is relied upon for the 'plurality of spatially disposed adhesive elements' as cited in the instant dependent claims.

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Regarding instant dependent **claims 17 and 33**:

The discussions above regarding instant independent claims 10 and 25 are relied upon.

The discussion above regarding instant dependent claim-7 above is relied upon for the 'plurality of spatially disposed adhesive elements" as cited in the instant dependent claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo
Francis T. Palo
Examiner
Art Unit 3644

FP